

GENERAL SALE AND SERVICE AGREEMENT

Last Updated Date: July 25, 2023

This document contains very important information regarding your rights and obligations, as well as conditions, limitations and exclusions that might apply to you. Please read it carefully.

This is a binding agreement between Toromont Cat, a division of Toromont Industries Ltd. ("**Vendor**") and the organization placing the order for Goods and/or Services from this Website ("**Customer**").

By placing an order for Goods or Services from this Website, you affirm that you are of legal age to enter into this agreement on behalf of Customer, and Customer accepts and is bound by these terms and conditions. You affirm that if you place an order on behalf of an organization or company, you have the legal authority to bind any such organization or company to these terms and conditions.

Customer may not order or obtain Goods or Services from this Website if Customer: (i) does not agree to these terms and conditions; (ii) if the individual acting on behalf of Customer is not the age of majority in your province or territory of residence, or; (iii) is prohibited from accessing or using this Website or any of this Website's contents, Goods or Services by applicable law.

These General Terms and Conditions of Sale and Service (these "**Terms**") apply to the purchase and sale of attachments, fluids, components and parts ("**Goods**") and related services, if any, ("**Services**") through <https://parts.cat.com/en/toromont> (the "**Site**" or "**Website**"). **These Terms are subject to change by Vendor without prior written notice at any time, in Vendor's sole discretion. Any changes to these Terms will be in effect as of the "Last Updated Date" referenced above. Customer should review these Terms before purchasing any Goods or Services that are available through this Site. Customer's continued use of this Site after the "Last Updated Date" will constitute its acceptance of and agreement to such changes.**

These Terms are an integral part of the [Website Terms and Conditions of Use](#) that apply generally to the use of Vendor's Site. Customer should also carefully review [Vendor's Privacy Policy](#) before placing an order for Goods or Services through this Site.

1. **MASTER AGREEMENT.** By agreeing to these Terms along with, as applicable, a particular Vendor quotation, estimate, work order, pro forma or final invoice, sales agreement or other sale or service agreement in connection with these Terms (collectively, "**Sales Agreements**") or clicking "accept" (or a similar term) to these Terms and/or a Sales Agreement, or issuing a purchase order for the provision of Goods and/or Services, or placing and order on this Site for Goods and/or Services, or accepting delivery of Goods and/or Services, Customer consents to be bound by these Terms. These Terms, together with the Sales Agreement (collectively, the "**Agreement**") are the entire agreement between the parties relating to the subject matter herein and supersede any prior representations or agreements, oral or written and all other communications with respect to the subject matter herein. The Agreement will not be varied except in writing, in a separate written instrument, signed by the authorized signing officers of the parties. Except as otherwise explicitly provided in these Terms, the provisions of these Terms will supersede, control and prevail over any conflicting provisions contained or referenced in any proposal, Customer purchase order, acceptance notice or other document (whether or not attached hereto or issued after the Agreement) related to the subject matter of these Terms. Except for the terms and conditions contained in the Agreement, all other terms and conditions are expressly disclaimed. Should any provision herein be held to be illegal or unenforceable, it will be considered separate and severable and the remaining provisions of these Terms will remain in force to the fullest extent permitted by law. Any failure of Vendor to insist upon strict performance by Customer of any provision herein is not a waiver of Vendor's right to demand strict compliance. The Agreement is binding upon the parties hereto, their respective heirs, successors and permitted assigns.

2. **ORDERS; DELIVERY; CHANGES; INTEREST.** Customer agrees that its order is an offer to buy, under these Terms, all Goods listed in its order. All orders must be accepted by Vendor and Vendor will not otherwise be obligated to sell the Goods to Customer. Vendor may choose not to accept orders at its sole discretion at any time prior to delivery, even after Vendor provides Customer with confirmation of the order number and details of the items ordered. All orders for Goods and Services may also be subject to credit approval. All purchases are EXW: Vendor's Location (as defined by Inco Terms 2020.) unless otherwise agreed in writing by the parties. Customer has no right to cancel orders for Goods. All Goods returns are subject to Vendor's current [Return Policy](#). Customer acknowledges that the total cost and anticipated completion times or dates for any particular Services and delivery dates for Goods are estimates only and Vendor has no liability whatsoever in connection therewith. All pricing quoted by Vendor is subject to change without notice until the time of delivery of the Goods or Services. Vendor has the right to make, at any time, such changes in detail or design, construction, arrangement or equipment as may, in its opinion, constitute an improvement or equivalent over that ordered. Any product images displayed on the Site are for illustration purposes only and may not be an exact representation of the Goods. Depicted equipment, vehicles, parts, components or attachments may not be included. Vendor reserves the right to change images of Goods at any time without notice and without liability accruing to Vendor. Actual delivery dates and pricing for Goods and Services and Vendor's performance under the Agreement depend on a variety of factors, including, but not limited to, governmental order, embargo, blockades, strikes or other labour disputes or labour shortages, shortages of goods and/or materials, transport and handling, accidents and/or delays, mechanical breakdowns, manufacturer or supplier delays or schedules, increased cost of Goods and labour, hyper-inflation, economic depression, extraordinary market conditions, revisions or changes to laws, regulations or governmental requirements, new or increased duties or tariffs or other causes beyond Vendor's control (collectively, "Extraordinary Events") and Vendor will not be liable for any failure to perform or changes to the extent caused or arising from an Extraordinary Event. An Extraordinary Event will not give rise to any rights to Customer not specifically provided for herein. Vendor reserves the right to cancel the Agreement or adjust pricing due to Extraordinary Events, in whole or in part, at any time prior to delivery of Goods and/or performance Services, as the case may be, without becoming liable to Customer for any damages or losses whatsoever by reason of such cancellation or adjustment; provided that, in such event, following a written request by the Customer, Vendor shall refund to Customer the portion of any amount that was prepaid in respect of the portion of the Agreement affected by such cancellation or adjustment, and such refund will constitute Customer's exclusive remedy and Vendor's sole liability in such event. In the event that any payment due hereunder is late, Customer will pay interest at the rate of 2% per month compounded monthly for an effective annual interest rate of 27.8%.

3. **PRICE; PAYMENT TERMS.** (a) All prices, discounts and promotions posted on this Site are subject to change without notice. The price charged for Goods or Services will be the price advertised on this Site at the time the order is placed, subject to the terms of any promotions or discounts that may be applicable ("**Purchase Price**"). The Purchase Price

charged will be clearly stated in the order confirmation email. Currency exchange rates are based on various public sources, are provided for information purposes only, and are not verified as accurate. Actual rates from Customer's local bank, credit card company or other institution may vary. Final transactions are processed only in Canadian dollars. Price increases will only apply to orders placed after the time of the increase. Posted prices do not include taxes or charges for shipping and handling. Although Vendor strives to display accurate price information, Vendor may, on occasion, make inadvertent typographical errors, inaccuracies or omissions related to pricing and availability and, therefore, Vendor reserves the right to correct any errors, inaccuracies or omissions at any time and to cancel any orders arising from such occurrences. (b) Upon Customer's submission of Customer's order as stated herein, Customer shall pay to Vendor the Purchase Price to purchase Goods by way of one of the available payment methods on the Site. Subject to these Terms, upon successful processing of the payment of the Purchase Price, the purchased Goods will be secured, and an email confirmation will be sent to Customer. Taxes shall be calculated on the total Purchase Price based on location of Goods and Services. All amounts set out or referred to in this Agreement are exclusive of all taxes, duties and levies, however designated or computed. Customer will pay all taxes, duties, and levies, including without limitation sales, use, or value-added taxes, duties and withholding taxes, based upon or payable in respect of this Agreement, the transactions, licenses, Goods or Services provided for hereunder or the payments made hereunder, excluding any taxes based upon Vendor's net income. If Customer is required to withhold any taxes from payments owed to Vendor under this Agreement, then the amount of the payment due will automatically be increased by the Customer by the amount of such tax, so that the amount actually received by Vendor equals the Purchase Price or amount otherwise due. Upon request, Customer shall promptly furnish Vendor with all official receipts evidencing payment of taxes due under or in relation to this Agreement to the appropriate taxing authority.

4. **RISK; TITLE; DEFAULT; SECURITY.** Vendor may insure the Goods for its own and Customer's interest at Customer's cost. The title to Goods, free and clear of all liens, hypothecs, claims and encumbrances of any kind ("**Liens**"), vests in Customer upon full payment of the Purchase Price thereof and all other amounts due under the Agreement. Until receipt of full payment or upon the occurrence of an Event of Default, Vendor may, in its sole discretion, at any time, without prejudice to or waiver of any of its rights or remedies under the Agreement, at law or in equity, withhold Goods, completed Services or scheduled Services or terminate orders for Goods or Services (without being liable to Customer for any losses so caused). Each of the following will constitute an "**Event of Default**" of Customer: (i) its default in making any payment due under the Agreement or failure to obtain credit approval, (ii) its breach of the Agreement, (iii) a proceeding in bankruptcy, receivership, winding-up or insolvency is instituted or threatened by or against Customer or its property, (iv) any execution, attachment or other writ is levied on any of Customer's property, (v) any Good is or is in danger of being confiscated, misused or insecure. Vendor takes and reserves a security interest in the Goods and Customer grants Vendor a purchase money security interest in all of its right, title and interest in the Goods as security for the payment of the Purchase Price thereof and other amounts due hereunder. Customer will, at its expense, promptly execute, acknowledge and deliver all such instruments and take all such action as Vendor may reasonably request in order to ensure to Vendor the benefits of the security interest and/or ownership interest in the Goods intended to be created by this Agreement. Customer authorizes Vendor to register or publish such financing statements or other instruments, as Vendor may determine appropriate to perfect and maintain its interest in the Goods. The taking or renewal of any promissory note by Vendor in respect of indebtedness secured hereunder is collateral security only and will not in any way operate as a merger, payment, alteration or postponement of such indebtedness, and will not otherwise affect terms of payment hereunder. Vendor may set-off monies it owes Customer against any monies Customer owes to Vendor. Without limiting any other provisions under the Agreement and without prejudice to any of Vendor's rights and recourses under the Agreement, at law or in equity, in authorizing Services to be performed and/or Goods to be supplied pursuant to the Agreement, whether under a Sales Agreement, work order, purchase order, estimate, invoice or other document, including by way of authorization given electronically, Customer authorizes Vendor to perform services (including the Services) and/or supply such Goods and acknowledges itself indebted to Vendor in the amount indicated therein pursuant to the Manitoba Garage Keepers Act, the Ontario Repair and Storage Liens Act, the British Columbia Personal Property Security Act, the Nunavut Garage Keepers Lien Act or similar legislation in the applicable province including any amendment and successor legislation thereto, as applicable

5. (a) **BUYER OBLIGATIONS.** Customer will pay the Purchase Price of Goods and Services and all Additional Charges to Vendor when due. Unless otherwise specifically agreed by Vendor in writing, Additional Charges are payable forthwith on demand. "**Additional Charges**" means all sums of money, other than the Purchase Price of Goods and Services, payable by Customer in connection with this Agreement including, without limitation, interest, insurance premiums, storage, additional Goods or Services not included in the original Purchase Price (in accordance with Vendor's prevailing ratlines), travel, mileage and related expenses, Customer's third party payment processing, fleet management or other similar service fees charged to Vendor, costs to register or discharge Liens, and all other collection costs, internal and external legal costs, and all other expenses, damages, claims, liability, losses, lost profits, penalties or fines incurred by the Vendor in connection with the Agreement. In the event Vendor is required to provide information or personnel in a witness or expert capacity (e.g. third party or insurance claims purposes) in connection with any Service or Good, Customer will pay Vendor for all time (including travel), labour (at then current rates), materials and other expenses in relation thereto plus a 15% administrative fee. Until all amounts due hereunder are fully paid, Customer will not sell or agree to sell, mortgage, charge or dispose of, or intentionally injure or abandon the Goods, remove or alter any name plate or insignia of Vendor on the Goods or remove the Goods from the province in which the Goods are initially used by Customer without Vendor's prior written consent and will keep the same in good repair and working order. Vendor may sell Customer's equipment in accordance with applicable law if such equipment remains in Vendor's possession. (b) **SCHEDULING.** Vendor will endeavour to accommodate schedule requests of Customer to the extent commercially practicable. Vendor reserves the right to change such schedule for any Services if Vendor's personnel are unable to perform scheduled Services because of illness, resignation, Force Majeure or an Extraordinary Event. Vendor will make commercially reasonable efforts to replace any such personnel within a reasonable time in order to limit impact on the schedule. In the event that Customer requests that scheduled Services be rescheduled or delays scheduled Services (collectively, "**Customer Delays**"), Vendor will make reasonable efforts to accommodate Customer's requested dates or reschedule delayed Services but Vendor's ability to reschedule Services is dependent upon the availability of Vendor's personnel. In the event of a Customer Delay, Vendor reserves the right to invoice Customer for all costs directly related to rescheduling (such as lodging charges or air travel fees) as Additional Charges under the Agreement. Without limiting the foregoing, where Services are to be performed at Customer's site or facility, if a Customer Delay, Force Majeure or Extraordinary Event results in scheduled travel of Vendor's personnel to or from the site or facility being delayed, interrupted or otherwise impacted for a period greater than two (2) hours, Vendor reserves the right to invoice Customer for the total standby or overtime rates of such personnel in addition to reasonable costs directly related to rescheduling (such as lodging charges or air travel fees) as Additional Charges under the Sales Agreements. (c) **FIRE SUPPRESSION SYSTEM.** Customer will perform repairs to, maintenance, inspection and certification of any fire suppression system and will be responsible for the associated removal

and installation of said system in order for Vendor to perform the Services. In the event that the Customer does not remove the fire suppression system as required, then Vendor is hereby authorized to remove it as deemed necessary by Vendor at an Additional Charge to Customer and Customer will remain solely responsible for the installation and certification of such system. To the fullest extent permitted by law, Customer shall defend, indemnify and hold harmless Vendor, its affiliates and subsidiaries, and all of their respective owners, directors, officers, managers, employees, agents or representatives for, from and against any and all liabilities, claims, actions, suits, damages, losses, costs and expenses (including, but not limited to, reasonable attorneys' fees and expert witness fees) that are caused by, arise from or related in any way to fire suppression systems (including, but not limited to, the death or injury of any person(s), damage to or destruction of any real or personal property and environmental liabilities).

6. GOODS PICK UP.

(a) Where Customer has elected to pick up Goods at Vendor's location, Vendor will store such purchased Goods within one of its facilities ("**Vendor Facility**") for pick up by Customer within two (2) weeks of pickup notification to Customer (the "**Term**"). In such event, upon the failure of Customer to pick up said Goods within the Term, Vendor may restock such Goods and Customer shall receive a refund of the Purchase Price of said Goods less restocking/handling fees of a minimum of 20% of the Purchase Price.

(b) Vendor undertakes to store Goods only in the packages in which they are originally received, if any.

(d) Vendor reserves the right to transfer at its own expense, without notice, stored Goods from one place to another in the Vendor Facility or between its Vendor Facilities. In the event that the nature or condition of the Goods stored creates a condition hazardous to the safekeeping and storage of other goods in the Vendor Facility or to any property or person, Vendor may forthwith remove such stored Goods from the Vendor Facility. In any such event, Vendor will give prompt notice to Customer that such Goods have been moved or removed and the location of them. Vendor reserves the right to charge Customer for the expenses in connection with the moving or removal of the Goods.

(e) All Goods are stored at Customer's risk of loss or damage by fire or explosion from any cause, flood, wind, storm, earthquake or other acts of god, war, insurrection, riot, civil or military authority, strikes, picketing, or any other labour trouble, shrinkage in weight, loss in quality, or due to the inherent or perishable nature of the Goods, or by insufficient cooepage, boxing, crating or packaging, or for wear and tear, or by any cause not originating in the Vendor Facility, or by any cause beyond the control of Vendor. No responsibility will be assumed for loss of Goods by leakage or failure to detect same, or for concealed damage. Vendor shall not be liable for loss or damage caused by breakage, theft, pilferage, rats, mice, vermin, sprinkler leakage or water, unless such damage is caused by failure of Vendor to exercise the ordinary care and diligence required of it by law. All handling and other charges must be paid on Goods lost or damaged by any of the above causes. Goods which are susceptible to damage through temperature changes or other causes incident to general storage are accepted into general storage only at Customer's risk for such loss or damage as might result from general storage conditions.

7. WARRANTY. Customer acknowledges that Vendor is not the Goods manufacturer's agent, therefore Customer represents that Customer has selected the Goods purchased hereunder based upon Customer's sole judgment prior to having offered to purchase same from Vendor, and Customer agrees that as between Vendor and Customer, the Goods purchased hereunder is of a design, size, fitness and capacity selected by Customer and that Customer is satisfied that the same is suitable and fit for its intended purposes. Vendor will assign to Customer the manufacturer's warranty applicable to new Goods to the extent permitted by the terms of such warranty and subject to all conditions and exclusions set forth therein. Services (if any) supplied by Vendor are covered by Vendor's then-current standard service warranty subject to all conditions and exclusions included in the applicable written warranty statement. If an extended product or service warranty is supplied by Vendor at the time of sale as indicated in writing in the Sales Agreements signed by Vendor, such warranty, if any, will be subject to all conditions and exclusions included in the applicable written warranty statement. BUYER FURTHER AGREES THAT VENDOR HAS NOT MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, DIRECTLY OR INDIRECTLY, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO SUITABILITY, DURABILITY, FITNESS FOR USE AND MERCHANTABILITY OF ANY SUCH GOODS OR SERVICES, THE PURPOSES AND USES OF THE GOODS AND SERVICES, THE CHARACTERIZATION OF THE SALE TO BUYER FOR TAX, ACCOUNTING OR OTHER PURPOSES, COMPLIANCE OF THE GOODS AND SERVICES WITH APPLICABLE GOVERNMENTAL REQUIREMENTS, OR OTHERWISE. Customer specifically waives all rights to make claim against Vendor herein for breach of any warranty of any kind whatsoever. For Goods not originally manufactured by Caterpillar Inc., Customer shall be solely responsible, at its own cost and expense, for the transfer of telematics incorporated in such Goods, if any, to a Customer account. Notwithstanding the foregoing, Customer shall be entitled to the benefit of any applicable manufacturer's warranties received by Vendor with respect to pre-owned Goods and to the extent assignable, and Vendor hereby assigns such warranties to Customer for the term of the applicable warranties. Vendor shall take such actions as may reasonably be necessary to assign such warranties to Customer. Vendor shall not be liable to Customer for any loss, damage or expense of any kind or nature caused directly or indirectly by any Goods (new or pre-owned) or Services purchased hereunder or for the use or maintenance thereof, or for the failure of operations thereof, or for the repairs, service or adjustment thereto, or by any delay or failure to provide any thereof, or by any interruption of service or loss of use thereof or for any loss of business or any other damage whatsoever and howsoever caused. No defect or unfitness of the Goods or Services shall relieve Customer of the obligation to pay the full Purchase Price, or to perform any other obligation under this Agreement. NONE OF THE FOREGOING WARRANTIES APPLY AND VENDOR MAKES NO WARRANTY WHATSOEVER RELATED TO FIRE SUPPRESSION SYSTEMS OR THE RECOMMENDATION, INSTALLATION, REMOVAL, MAINTENANCE OR SERVICING OF SAME. EXCEPT FOR THE FOREGOING WARRANTIES, VENDOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO GOODS OR SERVICES INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES AND CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY OR QUALITY OR ANY IMPLIED WARRANTIES THAT MAY ARISE FROM THE COURSE OF DEALING BETWEEN THE PARTIES. ALL IMPLIED WARRANTIES AND CONDITIONS, WHETHER STATUTORY, OR ARISING BY OPERATION OF LAW OR OTHERWISE, ARE EXPRESSLY DISCLAIMED BY VENDOR AND WAIVED BY BUYER.

SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER CONDITIONS AND WARRANTIES SO THE ABOVE DISCLAIMER MAY NOT APPLY TO BUYER'S ORDER.

8. LIMITATION OF LIABILITY. Notwithstanding anything contained in the Sales Agreements or elsewhere: (i) In no event will Vendor, its divisions, subsidiaries and affiliates and each of their respective employees, agents, officers and directors be liable for any aggravated, indirect, consequential, punitive or special damages, loss of profits or anticipated profits, loss of revenue or anticipated revenue, loss of use of property or equipment, incremental cost of new equipment, downtime, loss of business opportunity, loss of third party contracts, loss of production, increased cost of production, delay, and other economic loss, pain and suffering, emotional distress or similar damages, howsoever arising, whether based in contract, warranty, negligence, tort, strict liability or any other theory of law or equity, regardless of whether or not the concerned party was advised of the possibility of such damages; (ii) The aggregate liability of Vendor, its divisions, subsidiaries and affiliates and their respective employees, agents, officers and directors, if any, under or pursuant to the Agreement is limited to the amounts paid by Customer to Vendor for Goods or Services to which the liability relates; and (iii) Any and all claims arising out of or relating to the Goods, Services or the Agreement will be barred unless a legal proceeding is commenced within one (1) year of delivery of the Goods to Customer or completion of the Services related to the liability. Except as set out herein, Customer shall defend, indemnify, and hold harmless Vendor, its subsidiaries and affiliates, and its and their directors, officers, employees and agents from and against any and all claims, demands, liabilities, fines, penalties, loss, damage, cost and expense, of whatsoever nature incurred by Customer arising out of or connected with the Agreement.

9. EXPORT COMPLIANCE. Goods supplied may be subject to laws and regulations governing the export of goods and technology from Canada and/or the United States and/or use of goods outside of Canada. Goods supplied are subject to anti-bribery laws, environmental laws and regulations prohibiting and/or regulating the exportation and/or use of Goods outside of Canada (including, without limitation the United States and EU countries), export control and sanctions regimes including, without limitation, UK Export Control Regulations, EU regulations and sanctions, US Export Administration Regulations, US sanctions and regulations and International Traffic in Arms regulations and all applicable laws, rules, regulations, directives, ordinances, orders, or statutes ("**Export Laws**"). If Goods supplied hereunder are to be exported from Canada, then Vendor's performance of its obligations hereunder is subject to Customer obtaining, at Customer's cost, the necessary approvals, licenses and permits required by Export Laws; provided that Customer understands and agrees that certain Goods supplied hereunder may not be certified or otherwise eligible for exportation and/or use outside of Canada and, in such cases, notwithstanding any delivery term or incoterm to the contrary in the Sales Agreement, the purchase order or elsewhere, Vendor's delivery point will be located in Vendor's dealership territory in Canada (except only to the extent otherwise explicitly agreed to by Vendor in writing with respect to certain Goods). Customer shall not ship or divert any of the Goods hereunder, or any technical information relating thereto, to any country outside Canada in violation of Export Laws. Customer acknowledges that Vendor prohibits the sale, further sale, or transit of any Goods to Cuba, Iran, North Korea, Syria, and the Crimea region, regardless of whether a required government authorization, license, permit, or approval is obtained. Prohibited destinations also include any country or region prohibited under any sanctions program administered by the United States, Canada, United Kingdom, or the European Union. Customer will supply Vendor with all information required by Vendor to comply with all Export Laws. Responsibility to comply with Export Laws transfers to Customer for any transfer by it of the Goods. Customer represents and warrants that it is not a prohibited party or subject to sanctions pursuant to Export Laws and covenants that it will not resell or divert any of the Goods to a prohibited party as defined by Export Laws. Customer shall defend, indemnify, and hold harmless Vendor, its subsidiaries and affiliates, and its and their directors, officers, employees and agents from and against all claims, damages, costs and expenses resulting from its breach of this section.

10. COUNTERPARTS, ELECTRONIC SIGNATURES & DELIVERY. Electronic signature or electronic acceptance of the Agreement is intended to authenticate this writing and to have the same force and effect as a manual signature. Electronic signature or acceptance means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record.

11. FORCE MAJEURE. Vendor is not liable for any delay or failure to perform any of its obligations under this Agreement by reason of any event beyond its control, including, without limitation, an Act of God, war, insurrection, civil commotion, terrorism, sabotage, labour dispute or strike or lockout or slowdown, explosion, fire, flood or storm or other natural catastrophe, pandemic, epidemic, equipment failure, power or other utility failure, inability to obtain sufficient, suitable or timely labour or materials, extraordinary economic circumstances, or market conditions, embargo, law or ordinance or regulation, or plant breakdown ("**Force Majeure**").

12. GOVERNING LAW. All matters or disputes arising out of or relating to the Agreement are governed by and construed in accordance with the laws of the Province of Ontario, Canada and the federal laws of Canada applicable therein and the parties irrevocably attorn to the exclusive jurisdiction of the courts located in Toronto, Ontario without giving effect to any choice or conflict of law provision or rule (whether of the Province Ontario or any other jurisdiction).

13. ASSIGNMENT. Customer will not assign any of its rights or delegate any of its obligations under the Agreement without Vendor's prior written consent, provided however, that Vendor may assign its duties or obligations hereunder without the need to obtain consent of Customer to a manufacturer and/or its affiliates, and/or its dealers to better serve Customer and to improve upon products and services. Any purported assignment or delegation in violation of this section is null and void. No assignment or delegation relieves Customer of any obligations under the Agreement.

14. NO WAIVERS. The failure or delay by Vendor to exercise or enforce any right or provision of the Agreement will not constitute a waiver of future enforcement of that right or provision. The waiver of any right or provision will be effective only if in writing and signed by a duly authorized representative of Vendor.

15. THIRD PARTIES. The Agreement is not and is not intended to confer any rights or remedies upon any person or entity other than Customer.

16. NOTICES.

(a) To Customer. Vendor may provide any notice to Customer under these Terms by: (i) sending a message to the email address Customer provides to Vendor and consents to Vendor using such email address; or (ii) by posting to the Site. Notices sent by email will be effective when Vendor sends the email and notices Vendor provides by posting will be effective upon posting. It is Customer's responsibility to keep email addresses current.

(b) To Vendor. To give Vendor notice under these Terms, Customer must contact Vendor as follows: (i) for sales related matters, by email at the contact us details provided on the Site; or (ii) for all other matters, by personal delivery, overnight courier or registered or certified mail to Toromont Industries Ltd. at 3131 Highway 7 West, Building B, Concord, Ontario, L4K 5E1, Attn: Legal Department. Notices provided by personal delivery will be effective immediately. Notices provided by overnight courier will be effective one business day after they are sent. Notices provided by registered or certified mail will be effective three business days after they are sent.

17. SEVERABILITY. If any provision of the Agreement is invalid, illegal, void, or

unenforceable, then that provision will be deemed severed from the Agreement and will not affect the validity or enforceability of the remaining provisions of the Agreement.

18. **ENTIRE AGREEMENT.** These Terms, the [Website Terms and Conditions of Use](#), any Sales Agreements, the Vendor's current [Return Policy](#) and [Vendor's Privacy Policy](#) will be deemed the final and integrated agreement between the parties on the matters contained in

these Terms.

19. **LANGUAGE.** The parties expressly declare that they require this Agreement, and all documents and notices relating thereto, to be drafted and written solely in the English language. *Les parties déclarent expressément qu'elles exigent que cette convention, ainsi que tous les documents et avis s'y rapportant, soient rédigés et écrits exclusivement en anglais.*